

Applicant : Robert L. Newell  
Serial No. : 09/993,527  
Response to Office Action of April 9, 2003

Date: 8/7/03  
Art Unit: 3732

REMARKS/ARGUMENTS

Favorable reconsideration is respectfully requested in view of the above amendments and the following discussion.

Claims 5 and 10 have been canceled in order to obviate the rejection of those claims under 35 U.S.C. 112. Claims 1 through 4 and 6 through 9 remain in the application and have not been amended.

Each of the claims now in the application presents subject matter which is neither anticipated nor rendered obvious by the prior art. Thus, each of claims 1 through 4 sets forth an improvement in a brush for applying mascara to eyelashes wherein the brush includes bristles placed in a spiral arrangement having plural turns around a support. The improvement includes constructing the bristles of the brush of a polyamide fiber having an external surface modified to include a texturized surface configuration with a multiplicity of indents spaced apart along and around the surface configuration so as to provide enhanced pick-up of mascara and subsequent enhanced release of the mascara to the eyelashes. The bristles themselves have a relatively small diameter, and a relatively large number of bristles are provided within each turn of the spiral arrangement. In addition, as set forth in claim 4, the external surface is modified further to include a non-uniform wavy appearance. Likewise, each of claims 6 through 9 sets forth an improvement in a method for applying

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mascara to eyelashes, the improvement including picking up and applying mascara with a brush which incorporates the improved structural features set forth above to attain enhanced pick-up of mascara and subsequent release of picked-up mascara to the eyelashes.

All of the claims have been rejected under 35 U.S.C. 103 (a) as being unpatentable over Gueret in view of either Burns or O'Brien et al and, with respect to claims 4 and 9, further in view of Fitjer.

As noted in an Interview Summary entered in the application as Paper No. 3, it was agreed that Gueret discloses a brush in which the bristles are larger than and are in a lesser number per turn than in the improvement set forth in the present claims. Thus, the subject matter of the present claims is distinguished from Gueret by both a structural difference and a method which accomplish an improved result. Neither Burns nor O'Brien et al suggests any modification of the Gueret brush which could accomplish that improved result. Thus, both Burns and O'Brien et al are directed to painting brushes designed to apply paints to surfaces. The requirements of such painting brushes are totally different from the requirements of a mascara-applying brush and any structure provided for attaining the improved application of the paints addressed in these references would not be relevant to attaining an improved application of mascara. O'Brien et al speaks of bristles

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having diameters very much larger than those set forth in the present claims and, although Burns is silent with respect to bristle diameter, since the reference is directed to similar painting brushes the disclosure is no more relevant than that of O'Brien et al. While both Burns and O'Brien et al indicate that a textured surface has been available in larger diameter bristles for applying paint, it does not follow that a much smaller diameter bristle would be amenable to a texturized surface, or that such a texturized surface, if placed upon a smaller diameter bristle, would attain an improved result. Indeed, applicant experienced some doubt as to whether or not a small diameter bristle could support a texturized surface and whether or not a small diameter bristle could benefit from a texturized surface. However, it has been found that the smaller diameter bristles when used in combination with a larger number of bristles per turn and a texturized surface configuration accomplishes improved pick-up and subsequent improved release of mascara. In summary, there is no suggestion in the proposed combination of references that the use of smaller diameter bristles in a greater number of bristles per turn, combined with a texturized surface, can attain an enhanced pick-up and delivery of mascara.

With respect to claims 4 and 9, Fitjer is silent with respect to any indication of bristle size or number and discloses nothing which could anticipate or render obvious the full combination of

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elements which comprises the improvement set forth in these claims. The proposed combination of Gueret with Burns or with O'Brien et al, and further in view of Fitjer, is untenable in rendering obvious the subject matter of the present claims and the rejections based upon the proposed combination should be withdrawn.

The Examiner has brought to the attention of the applicant herein two further references, namely, the patents to Leone and to Vasas. While Leone speaks of smaller diameter bristles in a greater number per turn, there is no disclosure of the material from which the bristles are constructed. In fact, Leone indicates that a foam material or a comb construction can be the equivalent of bristles in the disclosed arrangement. Accordingly, Leone does not require that a particular material be employed in order for the disclosed brush to operate in the manner set forth in the reference and there is no suggestion in the reference of any enhanced performance attained by bristles of a particular material or surface configuration. Certainly, the reference does not suggest that a bristle having a texturized surface configuration can be utilized in a construction in which smaller diameter bristles are employed in larger numbers to attain enhanced pick-up and delivery of mascara. Indeed, Leone is concerned only with a two-pronged geometry for the application of mascara to both upper and lower eyelashes and is not at all concerned with the particular material or structure of the applicator surfaces themselves. With respect

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Art Unit: 3732

to Vasas, the reference discloses only relatively large diameter bristles. Moreover, in order to enhance the pick-up and delivery of mascara, the bristles of Vasas are hollow. Hence, Vasas discloses an entirely different bristle structure and suggests no construction which is analogous to the subject matter of the present claims. The disclosure of Vasas cannot serve as a basis for rendering the present subject matter obvious. In short, there is nothing in these two references which could anticipate or render obvious the subject matter of the present claims.

Any proposal to combine selected features from the several individual references cited above would not appear to be based upon suggestions in the references themselves, but is prompted by the disclosure in the present application of improvements comprising new combinations of elements which attain heretofore unrealized advantageous results. As such, the proposed combinations of references are untenable in rendering obvious the subject matter of the present claims. Accordingly, it is respectfully requested that the claims be allowed and the application be passed to issue.

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8/7/03

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